***THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY**

WRIT PETITION NO. 15717 of 1998

% 04.04.2006

Between:

Kyatham Yadagiri & others

…Petitioners

And

The Secretary to Govt., Energy (Power-I) Dept.,
Secretariat, Hyderabad & others.

…Respondents

! COUNSEL FOR THE PETITIONERS: Sri V.Tulasi Reddy

^ COUNSEL FOR THE RESPONDENTS: G.P.for Land Acquisitions

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> Head Note:

? CITATIONS:

1. AIR 1980 SC 319
2. AIR 1998 SC 2504
3. (2004) 8 SCC 14
4. 2005 AIR SCW 4796
5. 2002 (1) An.W.R. 543 (SC)
6. (1996) 3 SCC 88
7. (1995) 5 SCC 206

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O R D E R:

The Government of Andhra Pradesh, in its Energy Department, intended to acquire an extent of Ac.197-00 of land, in Bhupalpally village of Warangal District, for the benefit of Singareni Colleries, the 4th respondent herein. The requisition made by the 4th respondent, through their letter dated 23.9.1993, was acted upon by the Revenue Divisional Officer, Mulug, the 3rd respondent herein, and he submitted his proposal, dated 25.1.1995, to the District Collector, the 2nd respondent herein. The 1st respondent accorded necessary permission, way back on 6.9.1996, for publication of the notifications under Section 4(1) and 6 of Land Acquisition Act (for short "the Act"). A notification under Section 4(1) was published on 12.2.1998, in respect

of various extents of land, including the land in Sy.No.325/1. On the next day itself, a notification under Section 6 of the Act was published.

Petitioners state that they have purchased small plots in Sy.No.325/1, in the years 1996 and 1997, through registered sale deeds. They contend that the 3rd respondent inspected the area in October 1997, and submitted a report, stating that in a part of the land in Sy.No.325/1, houses have come up, and in that view of the matter, recommended for withdrawal of the proceedings, in respect of the said land from the acquisition. Similar recommendation is said to have been made by the next incumbent, vide report dated 12.1.1998, and the 2nd respondent is said to have recommended such deletion, vide letter dated 6.2.1998.

The petitioners challenge the notifications, issued under Sections 4(1) and 6 of the Act, insofar as they relate to their lands, on the ground that the enquiry under Section 5-A of the Act was dispensed with, contrary to law. They contend that when the proposals were pending for the past several years and the publication itself was made, two years after the 1st respondent accorded approval, there was no justification for the simultaneous publication of the notifications under Sections 4(1) and 6 of the Act. A further plea is raised to the effect that once the notification issued under Section 6, become illegal, it is impermissible for the respondents, to act upon the notification issued under Section 4(1), dated 12.2.1998, in view of the bar contained under Section 6 of the Act.

In the counter affidavit filed on behalf of respondents 1 to 3, the various steps, up to the publication of notifications under Sections 4(1) and 6 of the Act, were referred to. There is no serious dispute between

the parties, as regards the same. It is stated that mere existence of correspondence, in relation to the draft proceedings, does not confer any right upon the petitioners. They plead that the land is needed for underground mining and that the acquisition is in the national interest. They further plead that the petitioners, or other persons having claim in the land, would be paid compensation, and that no interference with the proceedings is called for.

The 4th respondent pleaded that the petitioners do not have any *locus standi* to file the writ petition, since they purchased the land, after the proceedings were mooted and initiated. They contend that the land is needed for the purpose of carrying out mining operations.

Sri V.Tulasi Reddy, learned counsel for the petitioners, submits that there was no justification for the respondents 1 to 3, in dispensing with the enquiry under Section 5-A of the Act. He pleads that the matter was under consideration by the respondents, for about 5 years, at various levels, before the notification under Section 4(1) came to be published, and it cannot be said that there was such an urgency, as to dispense with the enquiry under the said provision. According to the learned counsel, the declaration under Section 6 of the Act is liable to be set aside, and thereafter, it becomes impermissible for the respondents 1 and 2, to issue a fresh notification, in view of the bar contained under Section 6, and that in turn, would result in annulment of the notification under Section 4(1) of the Act. He has relied upon several judgments, in support of his contention.

Learned Government Pleader for Land Acquisition submits that though the proposals were under consideration at various levels, the urgency clause had to be invoked, due to the immediate need to take

over the land, for undertaking the mining activity. He contends that, if for any reason, the declaration under Section 6 is set aside, the period during which the writ petition was pending, deserves to be excluded, and if so done, it becomes competent for the respondents 1 and 2, to issue fresh declaration under
Section 6 of the Act.

Learned Standing Counsel for 4th respondent had adopted the arguments of the learned Government Pleader, and in addition to that, it is urged that the petitioners do not have the *locus standi*.

Before the matter is examined on merits, the objection raised by the 4th respondent, as to the *locus standi* of the petitioners needs to be dealt with. The petitioners categorically stated that they have purchased the bits of land in Sy.No.325/1, through various sale deeds, in the years 1996 and 1997. The sales took place before the notification under Section 4(1) of the Act was published on 12.2.1998. The mere fact that the names of the petitioners were not incorporated in the revenue records, hardly constitutes a ground, to deny them the right to file the present writ petition. At any rate, the original land owners have not objected to the claim of the petitioners. Therefore, it cannot be said that the petitioners do not have the *locus standi* to file the writ petition.

In view of the rival contentions put forward by the parties, two questions arise for consideration, in this writ petition. The first is as to whether the State was justified in dispensing with the enquiry under Section 5-A of the Act, for acquiring the lands in question. The second question is whether it would be permissible for the respondents 1 and 2, to issue a fresh declaration under Section 6 of the Act, on the basis of the notification, dated 12.2.1998, issued under Section 4(1) of the

Act.

It is not in dispute that the proposal for acquiring the land in question was mooted by the 4th respondent, through their letter dated 23.9.1993. The said proposal was channelised through the respondents 3 and 2. Ultimately, the 1st respondent accorded permission for publication of notifications under Sections 4(1) and 6 of the Act, through their orders dated 6.9.1996. The ultimate publication of the notification under Section 4(1), came to be made on 12.2.1998. It means that the proposal was accepted, four years after it was mooted, and the draft notification was published, 1½ years after it was approved by the Government. The Act prescribes a detailed procedure, in the matter of acquisition of lands. The State exercises its power of eminent domain, in resorting to compulsory acquisition. Inasmuch as the property of an individual is taken over, contrary to his will and notwithstanding his opposition, the procedure is required to be followed strictly.

In the matter of compulsory acquisition of land, it is ultimately the decision of the Government, that prevails. The only protection accorded to a citizen is, to put forward his grievance in an enquiry to be conducted under Section 5-A of the Act. Under sub-section (4) of Section 17 of the Act, a State is conferred with the power to dispense with the enquiry under Section 5-A of the Act, if it is of the opinion that the purpose, for which the land is proposed to be acquired, cannot brook the delay that is caused, on account of the enquiry, contemplated under Section 5-A of the Act. Sub-section (2) of Section 17 of the Act, provides ample guidance, in the matter of taking a decision to invoke the urgency clause. It reads as under:

> "**Sec. 17(2)**: In the following cases, that is to say,
>
> (a) Whenever, owing to any sudden change in the

channel of any navigable river or other unforeseen emergency, it becomes necessary for any Railway Administration to acquire the immediate possession of any land for the maintenance of their traffic or for the purpose of making thereon a river-side or ghat station, or of providing convenient connection with or access to any such station,

(b) whenever in the opinion of the Collector it becomes necessary to acquire the immediate possession of any land –

(i) for the purpose of any library or educational institution, or

(ii) for construction, extension or improvement of –

(a) any building or other structure in any village for the common use of the inhabitants of such village, or

(b) any godown for any society registered or deemed to be registered under the Madras Co-operative Societies Act, 1932, or A.P.Co-operative Societies Act, 1952 (Act XVI of 1952);

(c) any dwelling-house for the poor or

(d) any irrigation tank, irrigation or drainage channel or any well, or

(e) any; road, or

(iii) for any purpose connected with the Nagarjunasagar Project in the area to which the Nagarjunasagar Project (Acquisition of Land) Act, 1956, extends, or

(iv) for any purpose incidental to or connected with the Visakhapatnam Steel Project, in the area to which the Visakhapatnam Steel Project (Acquisition of Lands) Act, 1972 extends, or

(v) for the execution of any housing scheme under the Andhra Pradesh Housing Board Act, 1956,

or the appropriate Government or the District Collector as the case may be considers it necessary to acquire the immediate possession of any land for the purpose of maintaining any structure or system pertaining to irrigation water supply drainage, road communication or electricity the Collector may, immediately after the publication of the notice mentioned in sub-section(1) and with the previous sanction of the appropriate Government, or the District Collector as the case may be enter upon and take possession of such land, which shall thereupon vest absolutely in the Government free from all encumbrances:

Provided that the Collector shall not take possession of

> any building or part of a building under this sub-section without giving to the occupier thereof at lest forty-eight hours' notice of his intention so to do, or such longer notice as may be reasonably sufficient to enable such occupier to remove his movable property from such building without unnecessary inconvenience."

Insofar as it applies to the State of Andhra Pradesh, Section 17 of the Act was amended, and different purposes were enlisted under sub-section (2), for which the urgency clause can be invoked.

It needs to be noted that even in cases, where the land acquired for the purposes mentioned in sub-section (2)(b) of Section 17 of the Act, insofar as it applies to the State of Andhra Pradesh, dispensing with enquiry under Section 5-A, or taking possession of the land, even before the award is passed, is not a matter of course. If the circumstances disclose that the matter was pending at various stages, for years together, the State cannot be conceded the prerogative, to invoke the urgency clause, only when it comes to the conducting of enquiry under Section 5-A of the Act, or passing the award. Be that as it may, acquisition of lands for the purpose of undertaking mining activity is not treated, as a purpose, for which the urgency clause can be invoked. In ***STATE OF PUNJAB V. GURDIAL SINGH***[1], the Supreme Court observed as under:

> "Save in real urgency where public interest does not brook even the minimum time needed to give a hearing land acquisition authorities should not, having regard to Articles 14 (and 19), burke an enquiry under Section 17 of the Act. Here a slumbering process, pending for years and suddenly exciting itself into immediate forcible taking, makes a travesty of emergency power."

The said observation squarely applies to the facts of the present case.

In ***OM PRAKASH v. STATE OF UTTAR PRADESH***[2], the Supreme Court had undertaken an extensive review of the decided cases,

touching on the circumstances, under which the enquiry under Section 5-A of the Act can be dispensed with. The discussion was summed up in para-25 of the judgment as under:

> "In the light of the aforesaid discussion, therefore, the conclusion becomes inevitable that the action of dispensing with enquiry under Section 5-A of the Act in the present cases was not based on any real and genuine subjective satisfaction depending upon any relevant data available to the State authorities at the time when they issued the impugned notification under Section 4(1) of the Act and dispensed with Section 5-A inquiry by resorting to Section 17, sub-section (4) thereof. The first point is, therefore, answered in the negative, i n favour of the appellants and against the contesting respondents."

To the same effect are the judgments of the Supreme Court in ***UNION OF INDIA v. MUKESH HANS***[3] and ***HINDUSTAN PETROLEUM CORPN. LTD. V. DARIUS SHAPUR CHENAI***[4].

In the instant case, as observed in the preceding paragraphs, the notification under Section 4(1) of the Act was published, nearly 5 years after the proposals were mooted, and the declaration under Section 6 was published, on the next day, dispensing with the enquiry under Section 5-A. Having regard to the purpose for which the land was sought to be acquired, and the pace at which the matter was processed, it cannot be said that there was any justification for the respondents, in dispensing with enquiry under Section 5-A of the Act. As a result, the declaration under Section 6 of the Act becomes untenable.

The second question is as to whether it becomes competent for the respondents 1 and 2, to publish a declaration under Section 6 of the Act, afresh, on the basis of the notification, dated 12.2.1998, issued under Section 4(1) of the Act.

Before the Act came to be amended, through Act 68 of 1984, there did not exist any maximum time limit, within which a notification under Section 6 of the Act must be published. The Parliament recognized the fact that the date of notification under Section 4(1) becomes the basis for determining the market value, and that undue delay in publication of notification under Section 6 of the Act, would result in hardship to the land owner. Accordingly, it added a proviso, which prohibits the State from publishing a declaration under Section 6 of the Act, after the expiry of one year, from the date of publication of the notification under Section 4(1) of the Act. It reads as under:

> "Provided that no declaration in respect of any particular land covered by a notification under Section 4, sub-section(1):-
>
> (i) published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1957 (1 of 1957), but before the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of one year from the date of the publication of the notification;
>
> (ii) published after the commencement of the Land Acquisition (Amendment) Act 1984, shall be made after the expiry of one year from the date of the publication of the notification.
>
> Provided further that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a company or wholly or partly out of public revenues or some fund controlled or managed by a local authority.
>
> *Explanation I*:- In computing any of the periods referred to in the first priviso, the period during which any action or proceeding to be taken in pursuance of the notification issued under Section 4, sub-section(1) is stayed by an order of a Court shall be excluded."

It was strenuously argued by the learned Government Pleader for Land Acquisition that explanation-I can be pressed into service, where the declaration under Section 6 is set aside by a court, and the period

for which any stay granted by the court operated, must be excluded. Placing reliance upon certain judgments rendered by the Supreme Court, the learned counsel for the petitioners opposed this.

A plain reading of the provision, extracted above discloses that no declaration under Section 6 of the Act can be published, after expiry of one year from the date of publication. The explanation-I provides for exclusion of the time, during which any proceedings or action, to be taken, in pursuance of the notification under Section 4(1) were stated by a court. A plain and grammatical interpretation of the said provision would be that, if, after a notification under Section 4(1) was published and the subsequent proceedings, *viz*. publication of declaration under Section 6 was stayed by any court, the period during which the stay operated, must be excluded, in computing the period of one year. By no stretch of imagination, the explanation would apply to cases, where the declaration was already published, but was set aside, later on. If the very challenge is to the declaration under Section 6, it becomes impermissible to invoke Explanation-I, extracted above.

In ***PADMA SUNDARA RAO v. STATE OF TAMIL NADU***[5], the Supreme Court had an occasion to deal with an identical circumstance. In fact, that case was a reference to a Larger Bench of Five Judges, in view of two conflicting judgments of the Supreme Court in ***N.NARASIMHAIAH v. STATE OF KARNATAKA***[6], on the one hand, and the one, in ***OXFORD ENGLISH SCHOOL v. GOVERNMENT OF TAMIL NADU***[7]. The legislative intendment in amending Section 6 of the Act, through Act 68 of 1984, and the ratio laid down in the two cases referred to above, were discussed at length. The Supreme Court, ultimately, took the view that the explanation-I to proviso to sub-section (1) of Section 6 of the Act

cannot be invoked, in the cases, where a declaration issued under Section 6 was quashed. It was indicated that the language in Section 6 (1) is clear to that effect. It was observed as under:

> "If the legislature intended to give a new lease of life in those cases where the declaration under Section 6 is quashed, there is no reason why it could not have done so by specifically providing for it. The fact that the legislature specifically provided for periods covered by orders of stay or injunction clearly shows that no other period was intended to be excluded and that there is no scope for providing any other period of limitation. The *maxim actus curiae neminem* gravabit highlighted by the Full bench of the Madras High Court has no application to the act situation of this case.
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> The view expressed in ***N.Narasimhaiah's*** case (6 supra) and ***State of Karnataka v. D.C.Nanjudaiah*** ((1996) 10 SCC 619) is not correct and is overruled while that expressed in ***A.S.Naidu v. State of Tamil Nadu*** (SLPs (C) Nos.11353-55 of 1988) and ***Oxford's*** case (7 supra) is affirmed".

From the above discussion, it is clear that the first proviso to Section 6 of the Act can be invoked only to exclude the time, which is taken between the publication of draft notification under Section 4 (1) and draft declaration under Section 6, and that it cannot be pressed in to service, in cases where a declaration under Section 6 of the Act has already been made. When the Parliament intended that the period during which, any order of stay operated, before the publication of declaration under Section 6 must be excluded, the provision cannot be made use of, to cover situations subsequent to publication of the notification, through the process of interpretation. If that is done, the provision becomes divorced from the very object, which it was intended to serve, and may lead to judicial legislation.

For the foregoing reasons, the writ petition is allowed, and the declaration under Section 6 of the Act, dated 13-02-1998 is set aside. Since it becomes impermissible for respondents 1 to 3, to publish a

fresh declaration under Section 6 of the Act, on the strength of the notification dated 12-02-1998, issued under Section 4(1), the latter notification shall also stand set aside. In case, the respondents intend to acquire the lands or properties of the petitioners, it shall be open to them to do so, after publishing the necessary notifications, afresh. There shall be no order as to costs.

L. NARASIMHA REDDY, J.

Dt. 04-04-2006.

Note: L.R.copies be marked.

(B/o)

*PAN/KO**

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[1] AIR 1980 SC 319

[2] AIR 1998 SC 2504

[3] (2004) 8 SCC 14

[4] 2005 AIR SCW 4796

[5] 2002(1) An.W.R. 543 (SC)

[6] (1996) 3 SCC 88

[7] (1995)5 SCC 206